

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

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U.S. DISTRICT COURT, DISTRICT OF SOUTH CAROLINA  
2014 MAY 22 A 9:58

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IN RE: LIPITOR (ATORVASTATIN  
CALCIUM) MARKETING, SALES  
PRACTICES AND PRODUCTS  
LIABILITY LITIGATION ) MDL No. 2:14-md-02502-RMG  
 )  
 ) **CASE MANAGEMENT ORDER NO. 7**  
 )  
 ) **This Order relates to All Actions.**  
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**Production of Electronic Custodial Files**

1. Considering the parties' arguments in briefing and at the May 16, 2014 Status Conference and the proportionality limits under Rule 26(b)(2)(C), the Court ORDERS Pfizer to proceed with the production of electronic custodial files by using the search terms suggested by Plaintiffs.
2. "The metrics set forth in Rule 26(b)(2)(C)(iii) provide courts significant flexibility and discretion to assess the circumstances of the case and limit discovery accordingly to ensure that the scope and duration of discovery is reasonably proportional to the value of the requested information, the needs of the case, and the parties' resources." *Kleen Prods. LLC v. Packaging Corp. of Am.*, No. 10-C-5711, 2012 WL 4498465 at \*9 (N.D. Ill. Sept. 28, 2012) (quoting The Sedona Conference Commentary on Proportionality in Electronic Discovery, 11 Sedona Conf. J. 289, 294 (2010)).
3. Earlier in the litigation, Plaintiffs agreed to use search term queries to find responsive documents in electronic custodial files but disagreed with Pfizer over which terms to use. (Dkt. No. 134 at 2). The Court finds that using Plaintiffs' search terms and ordering the

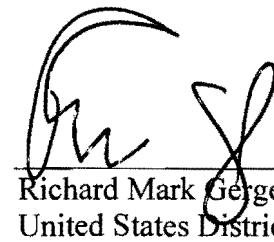
production of attachments in family groups, as the Court did in CMO 6, adequately addresses Plaintiffs' concerns about whether responsive documents are being found and produced.

4. Because Pfizer, following best practices, has collected all of a custodian's ESI and made it available for searching and review, the burden of applying Plaintiff's search terms is relatively small compared to the burden of employing an entirely new predictive coding software and "training" this system. Plaintiffs have not explained how the value of using predictive coding (over using their own search terms) outweighs the burden imposed by it. *See Kleen Prods.*, 2012 WL 4498465 at \* 10. Therefore, the Court does not require Pfizer to use predictive coding.

**Notice in Future Cases**

5. In cases filed in or transferred to this MDL after the entry of this Order, the Clerk shall include a statement in the initial notice to counsel that Case Management Orders Nos. 1-7 govern all cases in the MDL proceedings and can be viewed on the Court's MDL website.

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

May 22, 2014  
Charleston, South Carolina